

FILED MAR 06 2006 09:01AM 2006 USDC OREGON

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

BOARD OF TRUSTEES OF THE PORTLAND  
AREA UFCW LOCAL 555 EMPLOYERS  
HEALTH TRUST,

Plaintiff,

Civil No. 05-0361-TC

v.

FINDINGS AND  
RECOMMENDATION AND ORDER

ROBERT A. LEE, D.M.D., d/b/a  
LIBERTY DENTAL CLINIC; AND LIBERTY  
DENTAL CARE, P.C., an Oregon  
corporation,

Defendants

COFFIN, Magistrate Judge:

This is an ERISA action in which plaintiff trust fund is seeking employee benefit contributions that it asserts are due. As stated by plaintiff, the primary defendant is dentist Robert A. Lee, who signed a collective bargaining agreement in 2001 obligating him to make employee benefit contributions to the trust. Lee subsequently incorporated his practice in 2004. Plaintiff amended its complaint to include the corporation as a defendant.

Presently before the court are plaintiff's motion (#26) for extension of deadline and defendant's motion (#28) motion to dismiss for lack of prosecution and failure to comply with rules and a court order.

DISCUSSION

Defendant's motion to dismiss for lack of prosecution and failure to comply with court rules and a court order should be denied for the many reasons stated in Plaintiff's Opposition (#31).<sup>1</sup> Neither side in this action has had perfect compliance with the rules or deadlines, and , in the present circumstances of this case, neither should be sanctioned at this time. However, the court is well aware of the history of this case and will not hesitate to impose sanctions in the future.

Plaintiff's motion for a 180 day extension to file the Joint Alternative Dispute Resolution Report and Pretrial Order is allowed. The parties are allowed 60 days to complete discovery. The parties shall confer diligently and in good faith on discovery matters. Defendant's request (contained in # 33) for leave to file an Answer to the Amended Complaint is allowed and it shall be filed within 11 days.

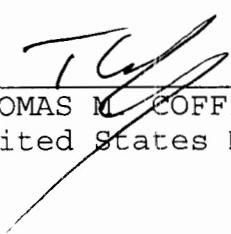
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<sup>1</sup>With the minor exceptions of plaintiff's discussion regarding venue and the extension of August 15, 2005 and plaintiff's passing reference to defendant's two motions to dismiss.

Conclusion

Defendant's motion (#28) to dismiss should be denied. Plaintiff's motion (#26) for a 180 day extension to file the Joint Alternative Dispute Resolution Report and Pretrial Order is allowed. The parties are allowed 60 days to complete discovery. Defendant's request (contained in Response (#33)) for leave to file an Answer to the Amended Complaint is allowed and it shall be filed within 11 days.

DATED this 3 day of March, 2006.

  
THOMAS M COFFIN  
United States Magistrate Judge